



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2012-0943, FRL-9930-25-OAR]

Findings of Failure to Submit a Section 110 State Implementation Plan for Interstate Transport for the 2008 National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that 24 states have failed to submit infrastructure State Implementation Plans (SIPs) to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2008 8-hour ozone national ambient air quality standard (NAAQS). Specifically, these requirements pertain to significant contribution to nonattainment, or interference with maintenance, of the 2008 8-hour ozone NAAQS in other states. These findings of failure to submit establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance unless, prior to the EPA promulgating a FIP, the state submits, and the EPA approves, a SIP that meets these requirements.

DATES: Effective date of this action is **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Mrs. Gobeail McKinley, Office of Air Quality Planning and Standards,

Air Quality Policy Division, Mail Code C539-04, 109 TW Alexander Drive, Research Triangle Park, NC 27711; telephone (919) 541-5246; email: *mckinley.gobeail@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment Under the Administrative Procedures Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions or incomplete submissions, to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

B. How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2012-0943. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

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The table below lists the states that failed to make an interstate transport SIP submittal addressing CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS. For questions related to specific states mentioned in this document, please contact the appropriate EPA Regional Office:

Regional Offices	States
EPA Region 1: Anne Arnold, Manager, Air Quality Planning Unit (OEP05-02), EPA Region I, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. (617) 918-1047	Maine, Massachusetts, New Hampshire, Vermont
EPA Region 3: Cristina Fernandez, Associate Director, Office of Air Program Planning (3AP30), Air Protection Division, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187. (215) 814-2178	Pennsylvania, Virginia, West Virginia
EPA Region 4: R. Scott Davis, Chief, Air Planning & Implementation Branch, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, 12 th Floor, Atlanta, GA 30303. (404) 562-9127	Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee
EPA Region 5: John Mooney, Air Program Branch Manager, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604-3590. (312) 886-6043	Illinois, Michigan, Minnesota
EPA Region 6: Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 665-7242	Arkansas, New Mexico, Oklahoma
EPA Region 7: Joshua A. Tapp, Branch Chief, Air Planning and Development Branch, EPA Region VII, 11201 Renner Blvd., Lenexa, KS 66219. (913) 551-7606	Iowa, Kansas, Missouri
EPA Region 9: Matt Lakin, Air Program Manager, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. (415) 972-3851	California

II. Background and Overview

A. Interstate Transport SIPs

The CAA section 110(a) imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3

years following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the “infrastructure” SIP because it ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an “interstate transport SIP.” In turn, section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (“prong 1”) or interfere with maintenance of the NAAQS in any other state (“prong 2”). Interstate transport prongs 1 and 2, also called the “good neighbor” provisions, are the requirements relevant to this findings document.

Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established per section 110(k)(1)(A). The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a “finding of failure to submit.” If the EPA finds a state has failed to submit a SIP to meet its statutory obligation to address 110(a)(2)(D)(i)(I), pursuant to section 110(c)(1) the EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA requirement. This finding therefore starts a 2-year clock for promulgation by the EPA of a FIP, in accordance with CAA section 110(c)(1), unless prior to such promulgation the state submits, and the EPA approves, a submittal from the state to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. The EPA will work with states subject to these findings of failure to submit and provide assistance as

necessary to help them develop approvable submittals in a timely manner. The EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

B. Background on 2008 Ozone NAAQS and Related Rulemakings

On March 12, 2008, the EPA strengthened the NAAQS for ozone.¹ The EPA revised the previous 8-hour primary ozone standard of 0.08 parts per millions (ppm) to 0.075 ppm. The EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. Infrastructure SIPs addressing the revised standard were due March 12, 2011. In September 2009, the EPA announced it would reconsider the 2008 8-hour ozone NAAQS.² To reduce the workload for states during the interim period of reconsideration, the EPA also announced its intention to propose staying implementation of the 2008 ozone NAAQS for a number of the requirements. Then, on January 6, 2010, as part of its voluntary rulemaking on reconsideration, the EPA proposed to revise the 2008 NAAQS for ozone from 75 ppb to a level within the range of 60 to 70 ppb. *See* 75 FR 2938 (January 19, 2010). The EPA indicated its intent to issue final standards, based upon the reconsideration, by summer 2011.

On July 6, 2011, the EPA finalized the Cross-State Air Pollution Rule (CSAPR), 76 FR 48208, in response to the remand by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) of the EPA's earlier rule, the Clean Air Interstate Rule (CAIR).³

¹ *See* 73 FR 16436 (March 27, 2008) (National Ambient Air Quality Standards for Ozone, Final Rule).

² The EPA's Fact Sheet, *EPA to reconsider Ozone Pollution Standards*, is available at http://www.epa.gov/groundlevelozone/pdfs/O3_Reconsideration_FACT%20SHEET_091609.pdf.

³ *See* 70 FR 25162 (May 12, 2005) (Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to the Acid Rain Program; Revisions to the NO_x SIP Call, Final Rule).

See North Carolina v. EPA, 531 F.3d 896 (D.C. Cir. 2008), *modified by* 550 F.3d 1176 (remanding CAIR). CSAPR addresses ozone transport with respect to the 1997 ozone NAAQS, but does not address the 2008 ozone standard, because the 2008 ozone NAAQS was under reconsideration by the EPA during the analytical work for CSAPR.

On September 2, 2011, consistent with the direction of the President, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget returned the draft final 2008 ozone NAAQS rule to the EPA for further consideration.⁴ In view of this direction and the timing of the EPA's ongoing periodic review of the ozone NAAQS required under CAA section 109 (as announced on September 29, 2008), the EPA decided to coordinate further proceedings on its voluntary rulemaking on reconsideration of the 2008 ozone NAAQS with that ongoing periodic review, by deferring the completion of its voluntary rulemaking on reconsideration until it completed its statutorily-required periodic review.⁵ During this time period for renewed implementation of the 2008 ozone standard, however, a number of legal developments pertaining to the EPA's promulgation of CSAPR created uncertainty over the EPA's statutory interpretation and implementation of the "good neighbor" requirement as to that standard.

On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P. v. EPA* addressing several legal challenges to CSAPR and holding, among other things, that states had no obligation to submit good neighbor SIPs until the EPA had first quantified each state's good neighbor obligation.⁶ Accordingly, under that decision the submission deadline for

⁴ See Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards, August 2014, pages 1-9. The Policy assessment is available at <http://www.epa.gov/ttn/naaqs/standards/ozone/data/20140829pa.pdf>.

⁵ *Id.*

⁶ *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 31 (D.C. Cir. 2012).

good neighbor SIPs under the CAA would not necessarily be tied to the promulgation of a new or revised NAAQS. While the EPA disagreed with this interpretation of the statute and sought review first with the D.C. Circuit *en banc* and then with the United States Supreme Court, the EPA complied with the D.C. Circuit's ruling during the pendency of its appeal. In particular, the EPA indicated that consistent with the D.C. Circuit's opinion, it would not at that time issue findings that states had failed to submit SIPs addressing the good neighbor requirements in CAA section 110(a)(2)(D)(i)(I).⁷ Moreover, when the EPA made findings that states had failed to submit infrastructure SIPs addressing the 2008 ozone NAAQS, the EPA explained that it was not issuing findings as to the good neighbor requirements in accordance with the court's holding in *EME Homer City Generation*. 78 FR 2882, 2884 (January 15, 2013) (Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2008 Ozone National Ambient Air Quality Standard).

While the D.C. Circuit declined to consider the EPA's appeal *en banc*,⁸ on January 23, 2013, the Supreme Court granted the EPA's petition for certiorari.⁹ During 2013 and early 2014, as the EPA awaited a decision from the Supreme Court, the EPA initiated efforts and technical analyses aimed at identifying and quantifying state good neighbor obligations for the 2008 ozone NAAQS. As part of this effort, the EPA solicited stakeholder input and also provided states with,

⁷ See, e.g., Memorandum from the Office of Air and Radiation former Assistant Administrator Gina McCarthy to the EPA Regions, "Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule," November 19, 2012; 78 FR 65559 (November 1, 2013) (final action on Florida infrastructure SIP submission for 2008 8-hour ozone NAAQS); and 78 FR 14450 (March 6, 2013) (final action on Tennessee infrastructure SIP submissions for 2008 8-hour ozone NAAQS).

⁸ *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying the EPA's motion for rehearing *en banc*).

⁹ *EPA v. EME Homer City Generation, L.P.*, 133 S. Ct. 2857 (2013) (granting the EPA's and other parties' petitions for certiorari).

and requested input on, emissions inventories for 2011 and emissions inventory projections for 2018.

On April 29, 2014, the Supreme Court issued a decision reversing the D.C. Circuit's *EME Homer City* opinion on CSAPR and held, among other things, that under the plain language of the CAA, states must submit SIPs addressing the good neighbor requirement in CAA section 110(a)(2)(D)(i)(I) within 3 years of promulgation of a new or revised NAAQS, regardless of whether the EPA first provides guidance, technical data or rulemaking to quantify the state's obligation. Thus, the Supreme Court affirmed that states have an obligation in the first instance to address the good neighbor provision after promulgation of a new or revised NAAQS, a holding that also applies to states' obligation to address interstate transport for CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

C. Mandatory Duty Suit for the EPA's Failure to Make Findings of Failure to Submit for States that Did Not Submit SIPs

On March 15, 2013, several states and the District of Columbia filed a complaint challenging the EPA's assertion in the January 15, 2013 findings of failure to submit for the 2008 ozone NAAQS infrastructure SIPs that it did not have the authority to issue findings as to the good neighbor provision.¹⁰ After the Supreme Court issued its decision reversing the D.C. Circuit's vacatur of CSAPR, the EPA requested partial vacatur and remand of the January 15, 2013 portion of the findings that pertained to the good neighbor provision. On August 1, 2014, the court granted the EPA's request, vacating the EPA's decision not to make findings of failure to submit with respect to the good neighbor provision and remanding the findings to the EPA for further consideration.

¹⁰ *Maryland v. EPA*, Case No. 13-1070 (D.C. Cir., filed March 15, 2013).

Shortly thereafter, Sierra Club and WildEarth Guardians filed two separate cases alleging that the EPA had not fulfilled its mandatory duty to make findings of failure to submit good neighbor SIPs addressing interstate transport in CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. In the first case, Sierra Club filed a complaint in the U.S. District Court for the Northern District of California (Northern District of California) on July 15, 2014, seeking an order to compel the EPA to make findings of failure to submit with respect to the 2008 ozone NAAQS good neighbor SIP for the state of Tennessee.¹¹ On November 18, 2014, Sierra Club and WildEarth Guardians filed another complaint in the same court seeking an order to compel the EPA to make findings of failure to submit with respect to the 2008 ozone NAAQS good neighbor SIPs for the following states: Arkansas, California, Connecticut, Georgia, Iowa, Illinois, Kansas, Massachusetts, Maine, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Virginia, Washington and West Virginia.¹² On January 15, 2015, the plaintiffs amended their complaint in the second case to add Alabama, Florida, North Carolina and Mississippi. On May 15, 2015, the court entered judgment ordering the EPA to, by June 30, 2015, sign a notice issuing its findings of failure to submit with respect to the 2008 ozone NAAQS interstate transport SIPs for the 26 states addressed in both cases.¹³

The EPA recognizes the practical and legal uncertainty that has surrounded the 2008 ozone NAAQS and the proper interpretation of the good neighbor provision. States were given the impression that if the NAAQS were revised as a result of the reconsideration, the 3-year SIP

¹¹ Complaint, *Sierra Club vs. McCarthy*, Case 4:14-cv-3198-JSW (N.D. Cal. July 15, 2014). The complaint also included a separate claim regarding the EPA's alleged failure to take final action to approve or disapprove infrastructure SIPs as to a number of states.

¹² Complaint, *Sierra Club vs. McCarthy*, Case 4:14-cv-05091-YGR (N.D. Cal. November 18, 2014).

¹³ See Judgment, *Sierra Club v. McCarthy*, Case 4:14-cv-05091-YGR (N.D. Cal. May 15, 2015).

deadline would reset. The EPA also recognizes that this uncertainty may have influenced states' efforts to develop SIPs to address CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS. Given that the NAAQS have not been revised and the United States Supreme Court overturned the D.C. Circuit opinion on CSAPR, March 12, 2011, remains the legally applicable deadline for good neighbor SIPs for the 2008 8-hour ozone NAAQS.

In response to the orders from the D.C. Circuit and the Northern District of California, the EPA is taking this action for all states that have failed to submit complete SIPs addressing CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. To date, 26 states, the District of Columbia and Puerto Rico have submitted complete SIPs addressing CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. Three states specifically identified in the Northern District of California's order have made complete submissions as of the date of this document. Therefore, the EPA is issuing national findings of failure to submit good neighbor SIPs addressing the requirements of CAA sections 110(a)(2)(D)(i)(I) as to the 2008 ozone NAAQS, addressing all states that have not made complete submissions as to the date of this document.

D. Further Background Specific to North Carolina SIP Status

On November 12, 2012, the state of North Carolina submitted a SIP revision to the EPA addressing, among other things, the good neighbor provision of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. The submission was determined to be complete by a letter dated November 15, 2012. On July 15, 2014, Sierra Club filed a complaint in the Northern District of California alleging that the EPA had failed to take final action on the North Carolina SIP submission, including the interstate transport provisions, by the statutory deadline and asked the

court to order the EPA to take such final action by a date certain.¹⁴ Subsequently, on September 3, 2014, the state of North Carolina submitted a letter withdrawing the good neighbor provision of the November 12, 2012, infrastructure SIP submission addressing CAA section 110(a)(2)(D)(i)(I).¹⁵ In reliance on the withdrawal, Sierra Club filed an amended complaint on December 12, 2014, that revised its claim to remove the allegation that the EPA had failed to act the good neighbor provision of North Carolina's SIP.¹⁶ The parties to the litigation subsequently entered into a consent decree that settled the remaining claim as to North Carolina.¹⁷ In further reliance on the withdrawal, Sierra Club and WildEarth Guardians also filed an amended complaint in case number 4:14-cv-05091, discussed above, alleging that the EPA had failed to make a finding of failure to submit as to North Carolina's good neighbor SIP for the 2008 ozone NAAQS.¹⁸

On June 26, 2015, North Carolina submitted a letter indicating that it wished to "rescind" its September 3, 2014 withdrawal of its good neighbor SIP to address the 2008 ozone NAAQS.¹⁹ The letter explained that the November 12, 2012 submittal did not include modeling and that preliminary air quality modeling released by the EPA on January 22, 2015, supported its interstate transport SIP. The letter also explained that, based on this modeling, the state

¹⁴ Complaint, *Sierra Club v. McCarthy*, Case 4:14-cv-03198-JSW, (N.D. Cal. July 15, 2014).

¹⁵ See, Letter from Sheila Holman, Director, Division of Air Quality, NCDENR, to Heather McTeer Toney, Regional Administrator, USEPA Region 4, "Withdrawal of Section 110(a)(2)(D)(i)(I) from North Carolina's 2008 Ozone Infrastructure State Implementation Plan Submittal" (September 3, 2014).

¹⁶ First Amended Complaint, *Sierra Club v. McCarthy*, Case 4:14-cv-03198-JSW, (N.D. Cal. December 12, 2014).

¹⁷ See Judgment, *Sierra Club v. McCarthy*, Case 4:14-cv-03198-JSW, (N.D. Cal. May 15, 2015).

¹⁸ See Amended Complaint, *Sierra Club v. McCarthy*, Case No. 4:14-cv-05091 (N.D. Cal. Jan. 15, 2015).

¹⁹ See Letter from Sheila C. Holman, NCDENR, to Heather McTeer Toney, USEPA Region 4, "Recession [sic] of North Carolina's September 3, 2014, Withdrawal of 2008 Ozone Infrastructure State Implementation Plan Certification Pertaining to Interstate Transport (Section 110(a)(2)(D)(i)(I))" (June 26, 2015).

concluded “it has met its obligations under CAA section 110(a)(1) and (2)(D) related to interstate transport . . . and therefore, does not expect” to be subject to this document finding certain states’ failure to submit interstate transport SIPs for the 2008 ozone NAAQS.

On June 30, 2015, the EPA responded to North Carolina’s June 26, 2015 letter.²⁰ Because the EPA determined that it was not appropriate to rescind North Carolina’s prior withdrawal of its November 12, 2012 SIP submission, and because the June 25, 2015, letter relies on new information and analysis to support the state’s conclusion regarding its statutory interstate transport obligations that was not contained in its November 12, 2012, SIP submission (*i.e.*, the preliminary air quality modeling released by the EPA on January 22, 2015), the EPA views the June 26, 2015 letter as a new SIP submission. Accordingly, the EPA has evaluated the June 26, 2015 letter for completeness as a SIP revision pursuant to the criteria in 40 CFR part 51, appendix V, and concluded that the June 26, 2015, letter is an incomplete SIP submission. The incompleteness letter notes that North Carolina’s June 26, 2015, letter contains new information and analysis upon which North Carolina now relies to support its conclusions regarding the state’s statutory obligations to address interstate transport, in particular the EPA’s air quality modeling, and that neither the new information nor North Carolina’s conclusions relying upon that information were subject to public notice and comment per criteria 2.1(f)-(h) of appendix V. Accordingly, the EPA is finding in this document that North Carolina has failed to submit a complete SIP revision addressing CAA section 110(a)(2)(D)(i)(I) as to the 2008 ozone NAAQS.

III. Findings of Failure to Submit for States That Failed to Make a Good Neighbor SIP Submission for the 2008 Ozone NAAQS

²⁰ See Letter from Beverly H. Banister, USEPA Region 4, to Sheila Holman, NCDENR, “Response to North Carolina’s June 26, 2015 Letter Seeking to Rescind the September 3, 2014 Withdrawal of the 2008 Ozone Infrastructure State Implementation Plan Certification Regarding Interstate Transport” (June 30, 2015).

Three states (*i.e.*, Connecticut, Rhode Island and Washington) addressed by the Northern District of California's order have made complete SIP submittals addressing the good neighbor provision for the 2008 ozone NAAQS. Hawaii was not addressed by the Northern District of California's order and the state has submitted a complete SIP submittal addressing the good neighbor provision for the 2008 ozone NAAQS. The EPA is making findings of failure to submit for 24 states. The EPA is finding that the following states have not made a complete good neighbor SIP submittal to meet the requirements of CAA section 110(a)(2)(D)(i)(I): Alabama, Arkansas, California, Florida, Georgia, Iowa, Illinois, Kansas, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont,²¹ Virginia and West Virginia.

IV. Environmental Justice Considerations

This document is making a procedural finding that certain states have failed to submit a SIP to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. The EPA did not conduct an environmental analysis for this rule because this rule would not directly affect the air emissions of particular sources. Because this rule will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

V. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

²¹ We are making a finding for the state of Vermont even though the state was not addressed by the Northern District of California's order. In fairness and to fulfill its statutory obligations, the EPA is addressing all states that have not made a submittal in this findings document.

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA under section 110(a) without the exercise of any policy discretion by the EPA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on

minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. The EPA's evaluation of environmental justice considerations is contained in section IV of this document.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Section 307(b)(1) of the CAA indicates which federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA has determined that this final rule consisting of findings of failure to submit certain of the required good neighbor SIP provisions is "nationally applicable" within the meaning of section 307(b)(1). This rule affects 24 states across the country that are located in seven of the ten EPA Regions, 10 different federal circuits, and multiple time zones.

This determination is appropriate because, in the 1977 CAA Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect

beyond a single judicial circuit.” H.R. Rep. No. 95-294 at 323 - 324, reprinted in 1977 U.S.C.C.A.N. 1402-03. Here, the scope and effect of this action extends to the 10 judicial circuits that include the states across the country affected by this action. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of “nationwide scope or effect” and thus to indicate that venue for challenges lies in the D.C. Circuit. Accordingly, the EPA is determining that this is a rule of nationwide scope or effect. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia within 60 days from the date this final action is published in the *Federal Register*. Filing a petition for review by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 30, 2015.

Janet G. McCabe,
Acting Assistant Administrator.
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